

APPEAL NO. 022424
FILED NOVEMBER 4, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 22, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that he did not sustain disability. The claimant appeals, asserting that the evidence shows that he was injured and that he has disability. He also complains that the hearing officer erred by overruling his motions to suppress hearsay evidence and to suppress statements that were not exchanged to him prior to the benefit review conference (BRC). The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The tenor of the claimant's objections to Carrier's Exhibit Nos. 3, 4, and 5 was that the carrier did not exchange the documents directly to him, but rather provided an extra copy to the ombudsman who was assisting the claimant, with a request that the ombudsman get the copy to the claimant where he was incarcerated. The ombudsman did so. There is no assertion by the claimant that he did not receive the documents. Parties must exchange documentary evidence with each other not later than 15 days after the BRC and thereafter, as it becomes available. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §142.13(c) (Rule 142.13(c)). The hearing officer overruled the objection, stating that the manner in which the documents were provided to the claimant was a reasonable way to get the documents to him under the circumstances of his incarceration. The other objection to the documents was that they were hearsay, and the hearing officer overruled that objection, noting that conformity to legal rules of evidence is not necessary. See Section 410.165(a).

Our standard of review regarding the hearing officer's evidentiary rulings is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. To obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; see *also Hernandez v. Hernandez*, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). In determining whether there has been an abuse of discretion, the Appeals Panel looks to see whether the hearing officer acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 951943, decided January 2, 1996; *Morrow v. H.E.B., Inc.*, 714 S.W.2d 297 (Tex. 1986). Given the bases that she provided for her rulings, we do not

find the hearing officer's ruling to be an abuse of discretion, nor can we say that the hearing officer acted without reference to guiding rules and principles.

Whether the claimant sustained a compensable injury and had disability are factual questions for the fact finder to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer specifically noted that the claimant "did not present himself as a credible witness in his own behalf," and that any medical opinion based on his statements was "likewise unreliable." The evidence supports the hearing officer's factual determinations. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TRANSCONTINENTAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C T CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Margaret L. Turner
Appeals Judge